



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court - I)
KOLKATA**

IA (IB) No. 1571/KB/2022
in
CP (IB) No. 13/KB/2022

An application under section 33 of Insolvency & Bankruptcy Code, 2016

In the matter of

Chaitanya Alloys Private Limited

... Operational Creditor

Versus

Y.R. Traders Private Limited

... Corporate Debtor

-And-

In the matter of:

Sushanta Kumar Choudhury,

Resolution Professional of Y.R. Traders Private Limited

... Applicant

Order reserved on : 5th January, 2023

Order pronounced on : 31st January, 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (through video conferencing):

For the Applicant:

1. Mr. Aritra Shankar Ray, Adv
2. Mr. Sushanta Kumar Choudhury, RP in person



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ORDER

Per: Balraj Joshi, Member (Technical)

1. This court was convened via video conferencing.
2. This is an application filed by the Resolution Professional with the approval of the Committee of Creditors ('CoC') seeking liquidation of the Corporate Debtor, viz., Y.R. Traders Private Limited [CIN: U51909WBWB2011PTC163724], on the ground that the CoC has decided to liquidate the Corporate Debtor by 90.60 % votes. The applicant has sought for the following reliefs:
 - a. *To pass the liquidation order for the Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 in compliance with Regulations 39B, 39C and 39D of IBBI (Insolvency Resolution Process for Corporate Debtor) 2016;*
 - b. *To appoint Mr. Sushanta Kumar Choudhury having Regn. No. IBBI/IPA-003/IP-N00292/2020-2021/13238 as liquidator of the Corporate Debtor;*
 - c. *To authorise the liquidator to sell the business of the Corporate Debtor as a going concern under Regulation 39C (1) of IBBI (Insolvency Resolution for Corporate Persons) Regulation 32(f) of the IBBI(Liquidation Process) Regulations 2016 or assets that are appearing in the books of accounts as on 07.06.2022.*
3. This Adjudicating Authority *vide* its order dated 7th June 2022 on a Petition filed by Chaitanya Alloys Private Limited (Operational creditor) under section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') directed initiation of the Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed **Mr. Sushanta Kumar Choudhury** (the applicant) as the Interim Resolution



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Professional ('IRP'). The applicant was later appointed as the Resolution Professional ('RP').

4. The applicant submits that in terms of section 15 of the Code, public announcement was made on 9th June 2022, in ***Financial Express*** (English) and ***Aajkal*** (Bengali) newspapers, thereby inviting claims from creditors of the Corporate Debtor. The public announcement was uploaded on the website of IBBI.
5. In terms of Regulation 6(2)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the last date for submission of proof of claim was 21.06.2022.
6. The applicant received five claims in total. The total claim was ₹434.51 Crore, out of which ₹433.77 Crores was admitted by the Resolution Professional. Accordingly, the CoC was constituted on 29.06.2022 and the 1st meeting of the CoC was held on 06.07.2022.
7. The public announcement in Form- G was made on 23.07.2022, inviting Expression of Interest (EOI) and in response one successful EOI was received by the Resolution Professional. Accordingly, one resolution plan was received from Anand Vihar Reality Pvt. Ltd.. The said resolution plan was later modified and approved by the CoC in its 7th meeting held on 25.10.2022. But the Resolution Applicant withdrew the resolution plan vide email dated 12.11.2022 and the EMD of ₹12,00,000/- has been fortified as per conditions of the RFRP and decision of the CoC taken in 8th meeting held on 16.11.2022.
8. In spite of its best efforts, the Resolution Plan for the Corporate Debtor could not be successfully be implemented and accordingly, the CoC, in its 8th meeting held on 16.11.2022 decided to forfeit the EMD of the



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- Resolution Applicant and approved the liquidation plan by 91.60% of the voting share.
9. Hence, the RP has filed the instant application under section 33(2) of the Code, before the Adjudicating Authority for liquidation of the Corporate Debtor on expiry of the CIRP period.
 10. The applicant /Resolution Professional, **Mr. Sushanta Kumar Choudhury** [Reg. No. IBBI/IPA-003/IP-N00292/2020-21/13238], has agreed to act as liquidator to carry on the process of liquidation and given his consent to act as Liquidator, in terms of section 34(1) of the Code and has a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member.
 11. We have considered the submission made by the learned Counsel on behalf of the applicant /RP and perused the record.
 12. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC approved by not less than sixty-six percent of voting share to liquidate the corporate debtor
 13. This Bench, therefore, hereby orders as follows: -
 - a. Prayers as sought for in **I.A. (IB) No. 1571/KB/2022** filed by Mr. Sushanta Kumar Choudhury, Resolution Professional of Progress Cultivation Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(2) of the Code;



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- b. **Mr. Sushanta Kumar Choudhury** [Reg. No. IBBI/IPA-003/IP-N00292/2020-21/13238], is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code.
- c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., *Financial Express* (English) National Edition and *Bartaman* (Kolkata Edition) (Bengali) , stating that the Corporate Debtor is in liquidation.
- e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the



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extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.

- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.

14. The application bearing **IA (IB) No. 1571/KB/2022** shall stand disposed of in accordance with the above directions.

15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

17. List the main **CP (IB) No. 13/KB/2022** for reporting progress on **17.04.2023**

[Balraj Joshi]
Member [Technical]

[Rohit Kapoor]
Member [Judicial]

Signed on this, the 31st day of January, 2023

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